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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

SACV09-01168 CJC (RNBx)

JOHN S. PAULINO and all others
similarly situated,

Plaintiff,

v.

BANK OF AMERICA,
NATIONAL ASSOCIATION;
BANK OF AMERICA
CORPORATION, a Delaware
corporation; and DOES 1 to 10
inclusive,

Defendants.

Case No.:

CLASS ACTION (FRCP 23)

COMPLAINT FOR DAMAGES:

1. FAILURE TO PAY ALL WAGES AND OVERTIME COMPENSATION (*Welfare Commission Orders and Labor Code §§500, et seq., and 1194*);
2. RECOVERY OF UNPAID WAGES AT THE AGREED RATE (SECRET LOWER WAGE) (*Labor Code §§221-223*);
3. FAILURE TO COMPENSATE FOR MEAL AND REST BREAKS (*Labor Code §§226.7 and 512*);
4. FORFEITURE OF VACATION PAY IN VIOLATION OF THE CALIFORNIA LABOR CODE;
5. FAILURE TO PROVIDE AN "ACCURATE" ITEMIZED WAGE STATEMENT UPON PAYMENT OF WAGES (*Labor Code § 226*);
6. FAILURE TO PAY COMPENSATION AT THE TIME OF TERMINATION (*Labor Code §§201-203*);
7. FAILURE TO PAY ALL WAGES AND OVERTIME

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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

FILED

**COMPLAINT
CASE NO.**

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- 8. COMPENSATION IN VIOLATION OF THE FAIR LABOR STANDARDS ACT
- 9. CONVERSION
- 10. VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §17200
- PENALTIES PURSUANT TO PAGA UNDER (*Labor Code* §§2698, *et seq.*)

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1 Plaintiff John S. Paulino, on behalf of himself and all others similarly situated,
2 complains and alleges as follows:

3 **INTRODUCTION**

4 1. Pursuant Fed.R.Civ.P. Rule 23 and California *Bus. & Prof. Code* section
5 17200, *et. seq.*, Plaintiffs have filed this action seeking class action treatment, to
6 recover unpaid wages, penalties, and restitution from Defendants for their violations
7 of, *inter alia*, California *Labor Code* §§ 500, 1194, 221-223, 226.7, 512, 227.3, 226,
8 201-203, 2698, *et. seq.*; Cal. *Bus. & Prof. Code* § 17200 *et. seq.*; the applicable Wage
9 Order(s) issued by the California Industrial Welfare Commission (hereafter, the
10 “IWC Wage Orders”); the Fair Labor Standards Act; and related common law
11 principles.

12 2. This proposed Class Action lawsuit challenges the Defendants’
13 employment practices with respect to its non-exempt employees in California and in
14 the United States, primarily in that Defendants did not pay non-exempt employees
15 for all hours worked. While employed by Defendants, Plaintiff and members of the
16 proposed California and national classes were required to perform off-the-clock work
17 and subject to alteration of time records by Defendants to reflect less hours than
18 actually worked. Consequently, Plaintiff and members of the proposed class were not
19 paid for all overtime hours worked, which may have also resulted in unpaid straight
20 time as well.

21 3. This proposed Class Action lawsuit further challenges the Defendants’
22 payroll practices with respect to its non-exempt employees in California and in the
23 United States, primarily in that Defendants failed to accurately calculate the rates
24 used for overtime and straight time of the Plaintiff and members of the proposed
25 California and national classes. Among other things, Defendants’ calculated rates
26 failed to take into each employee’s total remuneration including, but not limited to,
27 bonus incentives earned as well as actual hours worked. Consequently, Plaintiff and
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1 members of the California and national proposed classes were not paid for all hours
2 worked using the correct calculations.

3 4. This proposed Class Action lawsuit further challenges numerous other
4 of Defendants' employment practices with respect to Plaintiff and proposed class
5 members in California. Plaintiff and members of the proposed California classes
6 were not provided with uninterrupted 30 minute meal periods on every day in which
7 they worked more than five hours, were not provided with rest periods of ten minutes
8 for each four hours of work, were not paid an additional hour of pay for every day
9 they worked without a meal or rest period, were not provided with overtime pay at
10 one and one half their regular rates of pay for all overtime hours worked, did not have
11 all of their remuneration factored into their respective regular rates of pay for straight
12 time and overtime payment purposes, were not provided with all vested vacation pay
13 earned during employment, were not provided with accurate wage statements, had
14 compensation secretly withheld from them, and/or were not paid all wages owed to
15 them upon the termination of their employment.

16 5. The Acts complained of herein have occurred, are presently occurring,
17 and are expected to continue occurring, within the time period from four (4) years
18 preceding the filing of the original Complaint herein, up to and through the time of
19 trial for this matter (hereinafter, the "Relevant Time Period").

20 JURISDICTION

21 6. This Court has subject matter jurisdiction over this class action under
22 28 U.S.C. §§1331 and 1367(a). Specifically, this action presents claims under the
23 Federal Labor Standards Act (hereafter "FLSA") and accompanying state law claims
24 under the California Labor Code, which form part of the same case or controversy
25 under Article III, section 2 of the U.S. Constitution.

26 7. This Court also has original jurisdiction of this action under the Class
27 Action Fairness Act of 2005. The amount-in-controversy exceeds the sum of
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1 \$5,000,000 exclusive of interest and costs, and there is minimal diversity because
2 certain members of the class are citizens of a different state than any defendant as
3 required by 28 U.S.C. section 1332(d)(2).

4 VENUE

5 8. Venue is proper in this district pursuant to 28 U.S.C. §1391 because
6 Defendants are (i) subject to personal jurisdiction in this District, and/or
7 (ii) committed the wrongful conduct against certain members of the class in Orange
8 County, California. At all relevant times, Defendants maintained offices and
9 facilities in Orange County, California, and committed the wrongful conduct against
10 members of the class in Orange County, California.

11 THE PARTIES AND CONDUCT

12 **A. Plaintiff and Class Members**

13 9. Plaintiff John S. Paulino (hereafter "Plaintiff") started working for
14 Defendant Bank of America, National Association and/or Defendant Bank of
15 America Corporation (hereafter referred to collectively as "Bank of America" or
16 "Defendants") in February, 2008, as a non-exempt employee "loan officer" at a Bank
17 of America call center and continuously worked for Bank of America in that capacity
18 until June, 2009. During his employment with Defendants, Plaintiff performed his
19 duties as a loan officer at a Bank of America Call Center in Brea, California. While
20 employed by Defendants, Plaintiff was required to perform off-the-clock work,
21 including off-the-clock overtime work, was not provided with an uninterrupted 30
22 minute meal period on every day in which he worked more than five hours, was not
23 provided with rest periods of ten minutes for each four hours of work, was not paid
24 an additional hour of pay for every day he worked without a meal or rest period, was
25 not given overtime pay for all overtime hours worked, did not have all of his
26 remuneration factored into his regular rate of pay for overtime and straight time
27 payment purposes, was not provided all vested vacation pay earned during his
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1 employment, was not provided with accurate wage statements, had compensation
2 secretly withheld from him, and was not paid all wages owed to him upon the
3 termination of his employment.

4 10. Class members are similarly situated persons employed by Defendants
5 as non-exempt employees at retail banking centers who, during the applicable
6 limitations periods, were required to perform off-the-clock work, were not provided
7 with uninterrupted 30 minute meal periods on every day in which they worked more
8 than five hours, were not provided with rest periods of ten minutes for each four
9 hours of work, were not paid an additional hour of pay for every day they worked
10 without a meal or rest period, were not provided with overtime pay at one and one
11 half their regular rates of pay for all overtime hours worked, did not have all of their
12 remuneration factored into their respective regular rates of pay for straight time and
13 overtime payment purposes, were not provided with all vested vacation pay earned
14 during employment, were not provided with accurate wage statements, had
15 compensation secretly withheld from them, and/or were not paid all wages owed to
16 them upon the termination of their employment.

17 **B. Defendants**

18 11. Defendant Bank of America, National Association is a national
19 association organized under the laws of the United States which maintains its
20 principal place of business in the State of North Carolina. At all times relevant to this
21 action, Plaintiff is informed and believes and thereon alleges that Bank of America
22 National Association conducted business operations and employed Plaintiff and other
23 class members in the State of California and throughout the United States.

24 12. Defendant Bank of America conducted, and continues to
25 conduct, substantial and regular business throughout California and also is an
26 enterprise that affects commerce by engaging in nationwide banking in interstate
27 commerce and by regularly and recurrently receiving or transmitting interstate
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1 communications.

2 13. Plaintiff is ignorant of the true names, capacities, relationships, and
3 extent of participation in the conduct alleged herein, of the Defendants sued as DOES
4 1 through 100, inclusive, but is informed and believes and thereon alleges that said
5 Defendants are legally responsible for the wrongful conduct alleged herein and
6 therefore sues these Defendants by such fictitious names. Plaintiff will amend this
7 complaint to allege the true names and capacities of the DOE Defendants when
8 ascertained.

9 **CLASS ACTION ALLEGATIONS**

10 14. Plaintiff incorporates paragraphs 1 through 13 of this complaint as if
11 fully alleged herein. Plaintiff seeks to represent the following class and sub-classes
12 composed of and defined as follows:

13 **Plaintiff Class:**

14 **All non-exempt employees who have been employed or**
15 **are currently employed by Defendants in the United**
16 **States within the Relevant Time Period. This definition**
17 **excludes persons who perform or performed**
18 **managerial duties. As used in this Class Definition, the**
19 **term “non-exempt employee” refers to those who**
20 **Defendant has classified as non-exempt employees.**

21
22 **California Sub-Class:**

23 **All non-exempt hourly employees who have been**
24 **employed or are currently employed by Defendants in**
25 **the state of California within the Relevant Time Period.**
26 **This definition excludes persons who perform or**
27 **performed managerial duties. As used in this Class**
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1 **Definition, the term “non-exempt employee” refers to**
2 **those who Defendant has classified as non-exempt**
3 **employees.**

4
5 **California Terminated Sub-Class:**

6 **All non-exempt hourly California employees whose**
7 **employment with Defendants terminated and did not**
8 **receive all of the wages due them at the time of**
9 **termination, and/or who did not receive their final**
10 **wages in a timely manner as mandated by California**
11 **law. This definition excludes persons who perform or**
12 **performed managerial duties. As used in this Class**
13 **Definition, the term “non-exempt employee” refers to**
14 **those who Defendant has classified as non-exempt**
15 **employees.**

16
17 15. This action is brought and may be maintained as a class action under
18 Rule 23(a) of the Federal Rules of Civil Procedure.

19 A. **Numerosity:** Class members are so numerous that joinder of all
20 class members is impracticable. Plaintiff is informed and believes and thereon alleges
21 that there are more than 100 members in each class described above.

22 B. **Commonality:** There are questions of law and fact common to
23 class members. These questions include, but are not limited to:

24 1) Did Defendants have a policy or practice of requiring class
25 members to perform off-the-clock work?

26 2) Did Defendants have policies encouraging management
27 employees or those employees performing management duties to write down the time
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1 reported by hourly employees?

2 3) Did Defendants have a policy or practice of not providing
3 uninterrupted meal periods to class members for every day on which class members
4 worked more than five hours?

5 4) Did Defendants have a policy or practice of not allowing
6 class members to take rest periods of ten (10) minutes for every four hours worked?

7 5) Did Defendants have a policy or practice of not paying class
8 members one and one-half times their respective regular rates of pay for all overtime
9 work performed?

10 6) Did Defendants have a policy or practice of not factoring
11 all applicable forms of remuneration into class members' regular rates of pay for all
12 payment purposes?

13 7) Did Defendants have a policy or practice of not providing
14 class members with accurate itemized wage statements?

15 8) Did Defendants have a policy or practice of not paying class
16 members all final wages owed upon termination of employment in accordance with
17 California *Labor Code* §§201–202?

18 9) Did Defendants have a policy or practice of secretly
19 withholding compensation from class members by paying them lower wages than
20 required by statute?

21 10) Did Defendants have a policy or practice of not paying
22 class members all vested vacation wages upon termination of employment in
23 accordance with California *Labor Code* §227.3?

24 11) Did Defendants engage in unfair competition in violation
25 of California *Business & Professions Code* §17200 by engaging in the unlawful and
26 unfair practices alleged herein?

27 12) Are class members entitled to recover restitution from
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1 Defendants under California *Business & Professions Code* §17203?

2 13) Are class members entitled to recover civil penalties for
3 Defendants' alleged violations of the California *Labor Code*?

4 C. **Typicality:** The claims of Plaintiff are typical of the claims of
5 other class members. Plaintiff has suffered the same or similar injuries as other class
6 members based on a course of conduct which is not unique to Plaintiff but which has
7 commonly affected other class members.

8 D. **Adequacy of Representative:** Plaintiff will fairly and adequately
9 protect the interests of other class members. Plaintiff does not have any conflicts of
10 interest with other class members and Plaintiff will vigorously prosecute this action
11 on behalf of other class members. Plaintiff is represented by legal counsel with
12 substantial class action experience in civil litigation and employment law.

13 16. This case is brought and may be maintained as a class action under
14 Rule 23(b)(3) of the Federal Rules of Civil Procedure. Questions of law or fact
15 common to class members predominate over any questions solely affecting individual
16 class members and a class action is superior to other available methods for fairly and
17 efficiently adjudicating this controversy. Class action treatment will allow a large
18 number of similarly situated class members to simultaneously and efficiently
19 prosecute their common claims in a single forum without the needless duplication of
20 effort and expense that numerous individual actions would entail.

21 17. In addition, because the monetary amounts due to many individual class
22 members are likely to be relatively small, the burden and expense of individual
23 litigation would make it difficult, if not impossible, for individual class members to
24 seek and obtain relief. A class action will also serve the important public interest of
25 permitting class members harmed by Defendants' unlawful practices to effectively
26 pursue recovery of the sums owed to them.

27 18. Plaintiff is not aware of any difficulties that are likely to be encountered
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1 in the management of this action that would preclude its maintenance as a class
2 action.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY ALL WAGES AND OVERTIME**

5 **COMPENSATION UNDER CALIFORNIA INDUSTRIAL WELFARE**

6 **COMMISSION ORDERS AND *LABOR CODE* §§500, *et seq.*, and 1194**

7 **(Against Defendants and Does 1-100**

8 **On behalf of Plaintiff and Proposed Members of the California Sub-Class)**

9 19 Plaintiff hereby realleges, and incorporates by reference as though set
10 fully forth herein, the allegations contained in paragraphs 1 through 18.

11 20. Pursuant to Industrial Welfare Commission Order 4 and *Labor Code*
12 §§200, 500, 510, 512, 1194, and 1198, Defendants were required to compensate
13 Plaintiff and members of the Plaintiff Class for all hours worked, including overtime,
14 which is calculated at one and one-half (1½) times the regular rate of pay for hours
15 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for
16 the first eight (8) hours on the seventh consecutive work day; with double time after
17 eight (8) hours on the seventh day of any workweek, or after 12 hours in any work
18 day.

19 21. Plaintiff and members of the Plaintiff Class were, and are, non-exempt
20 employees entitled to the protections of Industrial Welfare Commission Order 4 and
21 *Labor Code* §§200, 500, 510, 512, 1194, and 1198. During the course of Plaintiff's
22 employment, and during the course of the employment of the members of the
23 Plaintiff Class, Defendants failed to compensate Plaintiff and members of the
24 Plaintiff Class for all wages and overtime hours worked as required under the
25 California *Labor Code* and *Code of Regulations*.

26 22. Under the aforementioned wage orders, statutes, and regulations,
27 Plaintiff and members of the Plaintiff Class are entitled to one and one-half (1½)
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1 times and/or double their regular rate of pay for overtime work performed during the
2 four (4) years preceding the filing of this Complaint, based on appropriate
3 calculations of the "total remuneration" for each workweek.

4 23. In violation of state law, Defendants have knowingly and willfully
5 refused to perform their obligations to compensate Plaintiff and members of the
6 Plaintiff Class for all wages earned and all hours worked. As a direct result, Plaintiff
7 and members of the Plaintiff Class have suffered, and continue to suffer, substantial
8 losses related to the use and enjoyment of such wages, lost interest on such wages,
9 and expenses and attorney's fees in seeking to compel Defendants to fully perform
10 their obligations under state law, all to their respective damage in amounts according
11 to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this
12 Court.

13 24. Defendants committed the acts alleged herein knowingly and willfully,
14 with the wrongful and deliberate intention of injuring Plaintiff and members of the
15 Plaintiff Class, from improper motives amounting to malice, and in conscious
16 disregard of Plaintiff's rights and the rights of the Plaintiff Class. Plaintiff and
17 members of the Plaintiff Class are thus entitled to recover nominal, actual,
18 compensatory, punitive, and exemplary damages in amounts according to proof a
19 time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

20 25. Defendants' conduct described herein violates Industrial Welfare
21 Commission Order 4 and *Labor Code* §§200, 500, 510, 512 and 1198. Therefore,
22 pursuant to *Labor Code* §§1194, 1198, 218.6, and *Civil Code* §§3287 and 3289,
23 Plaintiff and members of the Plaintiff Class are entitled to recover the unpaid balance
24 of minimum wages and/or overtime compensation Defendants owe Plaintiff and
25 members of the Plaintiff Class, plus interest, penalties, attorney's fees, expenses, and
26 costs of suit.

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SECOND CAUSE OF ACTION

RECOVERY OF UNPAID WAGES AT THE AGREED RATE

(SECRET LOWER WAGE) *LABOR CODE* §§221-223

(Against Defendants and Does 1-100)

On behalf of Plaintiff and Proposed Members of the California Sub-Class)

26. Plaintiff hereby realleges, and incorporates by reference as though set fully forth herein, the allegations contained in paragraphs 1 through 25.

27. Failure of an employer to pay its employees the agreed rate violates *Labor Code* §§221-223.

28. During the Relevant Time Period, Defendants required the members of the Class to remain under Defendants' control without paying therefor, which resulted in the members of the Class earning less than the agreed rate for portions of the days during which they worked.

29. Specifically, Defendants have failed to pay hourly workers an agreed upon rate by implying and enforcing a policy of requiring the Plaintiff and putative members of the Plaintiff Class to work uncompensated time "off-the-clock" in violation of California Law, including *Labor Code* §§500, *et seq.*, 1194, 1198, 221-223 and Regulations promulgated under the *Labor Code*. Defendants' policy is, and at all relevant times has been, to fail and refuse to pay wages and overtime compensation due and owing to the Plaintiff and members of the Plaintiff Class in violation of California Law.

30. In addition, during the Relevant Time Period, Defendants failed to include all remuneration in calculating pay rates, which resulted in members of the Class earning less than the agreed rates for overtime and straight time.

31. Defendants' pattern and practice of uniformly administering a corporate policy, whereby Defendants failed to pay the agreed upon rate to the members of the Class violates *Labor Code* §§221-223 and so constitutes an unjust enrichment.

1 32. In violation of state law, Defendants have knowingly and willfully
2 refused to perform their obligations to compensate Plaintiff and members of the
3 Plaintiff Class for all wages earned and all hours worked. As a direct result, Plaintiff
4 and members of the Plaintiff Class have suffered, and continue to suffer, substantial
5 losses related to the use and enjoyment of such wages, lost interest on such wages,
6 and expenses and attorney's fees in seeking to compel Defendants to fully perform
7 their obligations under state law, all to their respective damage in amounts according
8 to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this
9 Court.

10 33. Defendants committed the acts alleged herein knowingly and willfully,
11 with the wrongful and deliberate intention of injuring Plaintiff and members of the
12 Plaintiff Class, from improper motives amounting to malice, and in conscious
13 disregard of Plaintiff's rights and the rights of the Plaintiff Class. Plaintiff and
14 members of the Plaintiff Class are thus entitled to recover nominal, actual,
15 compensatory, punitive, and exemplary damages in amounts according to proof a
16 time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

17 34. Defendants' conduct described herein violates Industrial Welfare
18 Commission Order 4 and *Labor Code* §§221-223, in addition to *Labor Code* §§200,
19 500, 510, 512, 1194, and 1198. Therefore, pursuant to *Labor Code* §§221-223, 1194,
20 1198, 218.5, 218.6, and *Civil Code* §§3287 and 3289, Plaintiff and members of the
21 Plaintiff Class are entitled to recover the unpaid balance of agreed upon wages and/or
22 overtime compensation based upon the agreed upon wage rate, plus interest,
23 penalties, attorney's fees, expenses, and costs of suit.

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THIRD CAUSE OF ACTION

FAILURE TO COMPENSATE FOR MEAL AND REST BREAKS

UNDER CALIFORNIA *LABOR CODE* §§226.7 and 512

(Against Defendants and Does 1-100

On behalf of Plaintiff and Proposed Members of the California Sub-Class).

35. Plaintiff hereby realleges, and incorporates by reference as though set fully forth herein, the allegations contained in paragraphs 1 through 34.

36. *Labor Code* §226.7(a) provides, “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

37. At all times plead herein, Defendants routinely interrupted and/or failed to permit, authorize and/or provide Plaintiff and members of the Plaintiff Class with meal and rest breaks. By these actions Defendants violated *Labor Code* §226.7(a). At no time did the Plaintiff and members of the Plaintiff Class expressly or impliedly waive their right to their meal or rest breaks.

38. As a result of the unlawful acts of the Defendants, Plaintiff and members of the Plaintiff Class have been deprived of meal and rest breaks, and are entitled to recovery under *Labor Code* §226.7(a) in an amount of one additional hour of pay at the employees’ regular rate of compensation for each work day that a meal and rest period was not provided.

39. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and members of the Plaintiff Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff’s rights and the rights of the Plaintiff Class. Plaintiff and members of the Plaintiff Class are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

40. Defendants' conduct described herein violates Industrial Welfare Commission Order 4 and *Labor Code* §§226.7 and 512. Therefore, pursuant to *Labor Code* §§226.7, 512, 218.5, 218.6, and *Civil Code* §§3287 and 3289, Plaintiff and members of the Plaintiff Class are entitled to recover one additional hour of pay at the employees's regular rate of compensation for each work day that a meal and rest period was not provided, plus interest, penalties, attorney's fees, expenses, and costs of suit.

FOURTH CAUSE OF ACTION

FORFEITURE OF VACATION PAY IN VIOLATION OF THE CALIFORNIA LABOR CODE

(Against Defendants and Does 1-100

On behalf of Plaintiff and Proposed Members of the California Sub-Class)

41. Plaintiff incorporates paragraphs 1 through 40 of this complaint as if fully alleged herein.

42. California Labor Code §227.3 makes it unlawful for an employer to cause an employee to forfeit vacation pay without compensating the employee for the vacation time at the rate of pay in effect at the time of forfeiture.

43. During the applicable limitations period, Defendants caused Plaintiff to forfeit vested paid vacation days without providing monetary compensation for it based on his rate of pay in effect at that time. Plaintiff is informed and believes and thereon alleges that Defendants have maintained a policy or practice of causing members of the California Vacation Pay Class to forfeit vested paid vacation days without compensating them for forfeited days based on their rates of pay in effect at the time of forfeiture.

44. As a result of the above, Plaintiff seeks damages, restitution, plus interest, penalties, attorney's fees, expenses, and costs of suit, on behalf of both himself and the other class members for forfeited vacation days in amounts subject

1 to proof.

2 **FIFTH CAUSE OF ACTION**
3 **FAILURE TO PROVIDE AN “ACCURATE” ITEMIZED WAGE**
4 **STATEMENT UPON PAYMENT OF WAGES IN VIOLATION**
5 **OF LABOR CODE § 226**
6 **(Against Defendants and Does 1-100)**

7 **On behalf of Plaintiff and Proposed Members of the California Sub-Class)**

8 45 Plaintiff hereby realleges, and incorporates by reference as though set
9 fully forth herein, the allegations contained in paragraphs 1 through 44.

10 46. *Labor Code* §226(a) sets forth reporting requirements for employers
11 when they pay wages, as follows: “Every employer shall ... at the time of each
12 payment of wages, furnish his or her employees ... an itemized statement in
13 writing showing (1) gross wages earned; (2) total hours worked by the
14 employee...(3) the number of piece-rate units earned and any applicable piece rate
15 if the employee is paid on a piece-rate basis....” Section (e) provides: “An
16 employee suffering injury as a result of a knowing and intentional failure by an
17 employer to comply with subdivision (a) shall be entitled to recover the greater of
18 all actual damages or fifty dollars (\$50) for the initial pay period in which a
19 violation occurs and one hundred dollars (\$100) per employee for each violation
20 in a subsequent pay period, not exceeding an aggregate penalty of four thousand
21 dollars (\$4000), and shall be entitled to an award of costs and reasonable
22 attorney’s fees.”

23 47. Defendants failed to accurately record the hours worked by Plaintiff
24 and members of the Plaintiff Class.

25 48. Plaintiff and members of the Plaintiff Class request recovery of *Labor*
26 *Code* §226(e) penalties according to proof, as well as interest, attorney’s fees and
27 costs pursuant to *Labor Code* §226(e), in a sum as provided by the *Labor Code*
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1 and/or other statutes.

2 **SIXTH CAUSE OF ACTION**
3 **FAILURE TO PAY COMPENSATION AT THE TIME OF**
4 **TERMINATION IN VIOLATION OF CALIFORNIA**
5 ***LABOR CODE* §§201-203**

6 **(Against Defendants and Does 1-100 On Behalf of the California**
7 **Plaintiff and Proposed Members of the California Terminated Sub-Class)**

8 49. Plaintiff hereby realleges, and incorporates by reference as though set
9 fully forth herein, the allegations contained in paragraphs 1 through 48.

10 50. California *Labor Code* §201 requires an employer who discharges an
11 employee to pay compensation due and owing to said employee immediately upon
12 discharge. California *Labor Code* §202 requires an employer to promptly pay
13 compensation due and owing to an employee within 72 hours of that employee's
14 termination of employment by resignation. California *Labor Code* §203 provides
15 that if an employer willfully fails to pay compensation promptly upon discharge or
16 resignation in a prompt and timely manner as required pursuant to California
17 *Labor Code* §201 and §202 respectively, said employer is liable to said employee
18 for a waiting time wage continuation as described herein. Defendants' willful
19 failure to pay former employee Plaintiff and members of the Terminated Sub-
20 Class all of the wages due and owing them constitutes violations of *Labor Code*
21 §§201 and 203, which provides that an employee's wages will continue as a
22 waiting time wage continuation up to thirty (30) days from the time the wages
23 were due. Therefore, Plaintiff and members of the Terminated Sub-Class are
24 entitled to a waiting time wage continuation pursuant to *Labor Code* §203.

25 51. Plaintiff and members of the Terminated Sub-Class were previously
26 employed by Defendants and were terminated within the Relevant Time Period as
27 set forth above. Defendants failed to pay all wages due to this sub-class at the
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1 time of termination, and, in addition, failed to pay all wages due in a timely
 2 manner as mandated by California *Labor Code* §§201-203.

3 52. Plaintiff and members of the Terminated Sub-Class seek wages,
 4 penalties, plus costs, interest, disbursements and attorneys fees pursuant to
 5 California law, including but not limited to *Labor Code* §§218.5, 218.6, and *Civil*
 6 *Code* §§3287 and 3289.

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO PAY ALL WAGES AND OVERTIME COMPENSATION** 9 **IN VIOLATION OF THE FAIR LABOR STANDARDS ACT**

10 **(Against Defendants and Does 1-100**

11 **On behalf of Plaintiff and Proposed Members of the Plaintiff Class)**

12 53. Plaintiff hereby realleges, and incorporates by reference as though set
 13 fully forth herein, the allegations contained in paragraphs 1 through 52.

14 54. The Fair Labor Standards Act, 29 U.S.C. §201, et seq., states that an
 15 employee must be compensated for all hours worked, including all straight time
 16 compensation and overtime compensation. 29 C.F.R. §778.223 and 29 C.F.R.
 17 §778.315. This Court has concurrent jurisdiction over claims involving the Fair
 18 Labor Standards Act pursuant to 29 U.S.C. §216.

19 55. Plaintiff also brings this lawsuit as a collective action under the Fair
 20 Labor Standards Act, 29 U.S.C. §201, et seq. (the 'FLSA'), on behalf of all
 21 persons who were, are, or will be employed by Defendants in a non-exempt hourly
 22 position during the period commencing three years prior to the filing of this
 23 Complaint to and through a date of judgment, who performed work in excess of
 24 forty (40) hours in one week and did not receive all compensation as required by
 25 the FLSA for the hours worked. To the extent equitable, tolling operates to toll
 26 claims by the against the collective employees against the Defendants, the
 27 collective statute of limitations should be adjusted accordingly.

1 56. Questions of law and fact common to collective employees as a
2 whole include, but are not limited to the following:

3 a. Whether Defendants' policies and practices failed to accurately
4 record all hours worked by Plaintiff and other collective employees;

5 b. Whether Defendants' policies and practices were to write down
6 the time worked by Plaintiff and collective employees;

7 c. Whether Defendants failed to adequately compensate collective
8 employees for all hours worked as required by the FLSA, including the time
9 worked through their meal and rest periods;

10 d. Whether Defendants failed to include all remuneration in
11 calculating the appropriate rates for overtime and straight time;

12 e. Whether Defendants should be enjoined from continuing the
13 practices which violate the FLSA; and,

14 f. Whether Defendants are liable to the collective employees.

15 57. The Seventh Cause of Action for the violations of the FLSA may be
16 brought and maintained as an "opt-in" collection action pursuant to
17 Section 16(b) of FLSA, 29 U.S.C. 216(b), for all claims asserted by the
18 representative Plaintiff because the claims of Plaintiff are similar to the claims of
19 collective employees.

20 58. Plaintiff and collective employees are similarly situated, have
21 substantially similar job requirements and pay provisions, and are subject to
22 Defendants' common and uniform policy and practice of failing to pay for all
23 actual time worked and wages earned, failing to accurately record all hours
24 worked by these employees in violation of the FLSA and the Regulations
25 implementing the Act as enacted by the Secretary of Labor, and for failing to
26 include all remuneration in calculating overtime rates and straight time rates of
27 employees.
28

1 59. Defendants are engaged in communication, business, and
2 transmission throughout the United States and are, therefore, engaged in
3 commerce within the meaning of 29 U.S.C. §203(b).

4 60. 29 U.S.C. §225 provides that a three-year statute of limitations
5 applies to willful violations of the FLSA. The conduct by the Defendants which
6 violated the FLSA was willful.

7 61. Plaintiff and collective employees regularly worked in excess of forty
8 (40) hours in a workweek. Pursuant to the Fair Labor Standards Act, 29 U.S.C.
9 §201, et seq., Plaintiff and collective employees are entitled to compensation for
10 all hours actually worked, and are also entitled to wages at a rate not less than one
11 and one-half times their regular rate of pay for all hours worked in excess of forty
12 (40) hours in any workweek.

13 62. Plaintiff and collective employees were all paid by Defendants on an
14 hourly or salary basis for the hours worked up to forty (40) in a workweek, but
15 Plaintiff and collective employees worked more than forty (40) hours per
16 workweek, and were not paid compensation for all hours worked, including
17 overtime hours. Defendants also failed to pay Plaintiff, and collective employees,
18 compensation for the hours they worked performing duties primarily for the
19 benefit of the employer during meal and rest periods.

20 63. For purposes of the Fair Labor Standards Act, the employment
21 practices of Defendants were and are uniform throughout California and the
22 United States in all respects material to the claims asserted in this Complaint.

23 64. Defendants violated the Fair Labor Standards Act by failing to pay
24 hourly employees for all hours worked, including overtime hours, as alleged
25 herein above.

26 65. As a result of Defendants' failure to pay overtime compensation for
27 hours worked, as required by the FLSA, Plaintiff and collective employees were
28

1 damaged in an amount to be proved at trial.

2 66. Plaintiff, therefore, demands that he and collective employees be paid
3 overtime compensation as required by the FLSA for every hour of overtime in any
4 workweek for which they were not compensated, compensation for meal and rest
5 periods, compensation for miscalculation of overtime and straight time, plus
6 liquidated damages, interest and statutory costs as provided by law.

7 **EIGHTH CAUSE OF ACTION**

8 **CONVERSION**

9 **(Against Defendants and Does 1-100**

10 **On behalf of Plaintiff and Proposed Members of the Plaintiff Class)**

11 67. Plaintiff hereby realleges, and incorporates by reference as though set
12 fully forth herein, the allegations contained in paragraphs 1 through 66.

13 68. Defendants knowingly and intentionally required Plaintiff, and other
14 similarly situated employees to perform "off-the-clock" work and failed to pay
15 them the minimum wages due, and/or agreed upon wages due, and/or overtime.

16 69. Defendants knowingly and intentionally failed to allow and pay for
17 meal and rest breaks.

18 70. Defendants withheld the earned wages/overtime wages, pay for meal
19 and rest breaks and exercised dominion and control over them such as to convert
20 these withheld wages which Plaintiff and members of the Plaintiff Class owned or
21 had the right to own, and had the legal right to hold, possess, and dispose.

22 71. Defendants knowingly, willfully, and unlawfully interfered with the
23 Plaintiff and the rights of all of the members of all of the Plaintiff Class to own,
24 possess, and/or control the disposition of said wages and overtime wages. Said
25 actions constitute a criminal misdemeanor violation of Labor Code § 206.5.

26 72. The exact amount of wages and overtime wages earned by Plaintiff
27 and each of the members of the Class here alleged, is identifiable even though the
28

1 specific sum of money each Plaintiff and each of the members of the Plaintiff
2 Class may vary by individual.

3 73. In refusing to pay wages and overtime owed to Plaintiff and the
4 members of the Plaintiff Class, Defendants knowingly, unlawfully, and
5 intentionally took, appropriated, and converted the property of Plaintiff and
6 members of the Plaintiff Class here alleged for Defendants' own use, purpose, and
7 benefits.

8 74. Plaintiff, and all similarly situated persons in the class, have been
9 injured by said conversion in the amount of the monies converted by the
10 Defendants, with interest thereon from that time.

11 75. Defendants' actions constituting conversion were oppressive,
12 malicious and fraudulent. As such, Plaintiff and all similarly situated persons are
13 entitled to punitive and exemplary damages. Plaintiff further seeks on behalf of
14 the general public, the appointment of a receiver, as necessary to establish the total
15 monetary relief sought from Defendants.

16 **NINTH CAUSE OF ACTION**
17 **VIOLATIONS OF CALIFORNIA**
18 ***BUSINESS AND PROFESSIONS CODE §17200***
19 **(Against Defendants and Does 1-100)**

20 **On behalf of Plaintiff and Proposed Members of the Plaintiff Class)**

21 76. Plaintiff hereby realleges, and incorporates by reference as though set
22 fully herein, the allegations contained in paragraphs 1 through 75.

23 77. By violating the statutes and regulations set forth in this Complaint,
24 and incorporated by reference hereto, and unfairly failing to pay Plaintiff and
25 members of the Plaintiff Class all wages (minimum wage, overtime, agreed upon
26 wages, and meals and breaks) earned and owing. Defendants' acts constitute
27 unfair and unlawful business practices under *Business and Professions Code*
28

1 §17200, *et. seq.*

2 78. Defendants' violations of California wage and hour laws and illegal
3 payroll practices or payment policies constitute a business practice because it was
4 done repeatedly over a significant period of time, and in a systematic manner to
5 the detriment of Plaintiff and members of the Plaintiff Class.

6 79. For the four (4) years preceding the filing of this action, Plaintiff and
7 members of the Plaintiff Class have suffered damages and request restitution of all
8 monies and profits to be disgorged from Defendants in an amount according to
9 proof at the time of trial.

10 **TENTH CAUSE OF ACTION**

11 **CIVIL PENALTIES UNDER THE CALIFORNIA *LABOR CODE***

12 **PRIVATE ATTORNEYS GENERAL ACT**

13 **(By Plaintiff and Proposed Members of the California Sub-Classes)**

14 80. Plaintiff hereby realleges, and incorporates by reference as though set
15 fully forth herein, the allegations contained in paragraphs 1 through 79.

16 81. During the Relevant Time Period, Defendants violated California
17 *Labor Code* §§201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512 and 1194.

18 82. California *Labor Code* §§2699(a) and (g) authorize an aggrieved
19 employee, on behalf of himself and other current or former employees, to bring a
20 civil action to recover civil penalties pursuant to the procedures specified in
21 California *Labor Code* § 2699.3.

22 83. Pursuant to California *Labor Code* §§2699(a) and (f), Plaintiff and
23 other members of the California Civil Penalties Class are entitled to recover civil
24 penalties for Defendants' violations of California *Labor Code* §§201, 202, 203,
25 204, 223, 226(a), 226.7, 227.3, 510, 512 and 1194 during the applicable
26 limitations period in the following amounts:

27 A. For violations of California Labor Code §§201, 202, 203 and
28

1 1194, one hundred dollars (\$100.00) for each aggrieved employee per pay period
2 for each initial violation and two hundred dollars (\$200.00) for each aggrieved
3 employee per pay period for each subsequent violation (penalty amounts
4 established by California Labor Code § 2699(f)(2));

5 B. For violations of California *Labor Code* §204, one hundred
6 dollars (\$100.00) for each aggrieved employee for each initial violation and two
7 hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent
8 (25%) of the amount unlawfully withheld from each aggrieved employee for each
9 subsequent, willful or intentional violation (penalty amounts established by
10 California *Labor Code* §210);

11 C. For violations of California Labor Code § 223, one hundred
12 dollars (\$100.00) for each aggrieved employee for each initial violation and two
13 hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent
14 (25%) of the amount unlawfully withheld from each aggrieved employee for each
15 subsequent, willful or intentional violation (penalty amounts established by
16 California *Labor Code* §225.5);

17 D. For violations of California *Labor Code* §227.3, one hundred
18 dollars (\$100.00) for each aggrieved employee per pay period for each initial
19 violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
20 period for each subsequent violation (penalty amounts established by California
21 *Labor Code* §2699(f)(2));

22 E. For violations of California *Labor Code* §226(a), two hundred
23 fifty (\$250.00) per employee for initial violation and one thousand dollars
24 (\$1,000.00) per employee for each subsequent violation (penalty amounts
25 established by California *Labor Code* § 226.3); and,

26 F. For violations of California *Labor Code* §§510 and 512, fifty
27 dollars (\$50.00) for each aggrieved employee for each initial violation for pay
28

1 period for which the employee was underpaid in addition to an amount sufficient
2 to recover unpaid wages and one hundred dollars (\$100.00) for each underpaid
3 employee for each pay period for which the employee was underpaid in addition
4 to an amount sufficient to recover unpaid wages (penalty amounts established by
5 California *Labor Code* § 558).

6 84. Plaintiff is currently in the process of complying with the procedures
7 for bringing suit specified in California *Labor Code* §2699.3. By letter dated
8 September 24, 2009, Plaintiff gave written notice by certified mail to the Labor
9 and Workforce Development Agency ("LWDA") and Defendants of the specific
10 provisions of the Labor Code alleged to have been violated, including the facts
11 and theories to support the alleged violations.

12 85. Pursuant to California *Labor Code* §2699(g), Plaintiff and the other
13 class members are entitled to an award of reasonable attorney's fees and costs in
14 connection with their claims for civil penalties.

15 PRAYER FOR RELIEF

16 WHEREFORE, Plaintiff, on behalf of himself and all others similarly
17 situated, prays for relief and judgment against Defendants as follows:

- 18 A. An order that the action be certified as a class action;
- 19 B. An order that Plaintiff be appointed class representative;
- 20 C. An order that counsel for Plaintiff be appointed class counsel;
- 21 D. An order allowing notice to proceed with respect to Plaintiff's
22 Seventh Cause of Action to persons who are similarly situated to
23 Plaintiff;
- 24 E. Damages;
- 25 F. Restitution;
- 26 G. Civil penalties;
- 27 H. Statutory penalties;
- 28

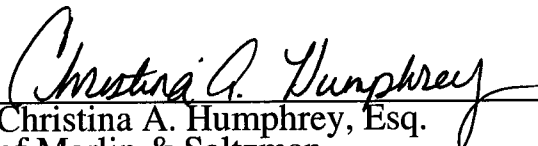
- I. Punitive Damages;
- J. Pre-judgment interest;
- K. Costs of suit;
- L. Reasonable attorney's fees; and
- M. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff on behalf of himself and all others similarly situated demands a trial by jury for himself and all other class members the class on all claims so triable.

DATED: October 8, 2009

**MARLIN & SALTZMAN, LLP
LAW OFFICE OF SHAUN SETAREH, APC
LAW OFFICE OF LOUIS BENOWITZ
THE SPIVAK LAW FIRM**

By: 
Christina A. Humphrey, Esq.
of Marlin & Saltzman
Attorneys for Plaintiff and Proposed Class

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

ORIGINAL

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
JOHN S. PAULINO and all others similarly situated

DEFENDANTS
BANK OF AMERICA, NATIONAL ASSOCIATION; BANK OF AMERICA CORPORATION, a Delaware corporation; and DOES 1 to 100, inclusive

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Stanley D. Saltzman, Esq.; Louis M. Marlin, Esq.; Marcus J. Bradley, Esq.;
Christina A. Humphrey, Esq.; MARLIN & SALTZMAN, 29229 Canwood
Street, Suite 208 Agoura Hills, CA, 91301 (818) 991-8080

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No

☐ MONEY DEMANDED IN COMPLAINT: \$

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Labor Code Secs. 500, et seq.; 201-203, 221-223, 226, 226.7, 512, 1194, 2802; Bus. & Prof. Code Secs. 17200, et seq.; Welfare Commission Orders

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL PROPERTY	PETITIONS	<input checked="" type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General Habeas Corpus	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE / PENALTY	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 465 Other Immigration Actions			FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

SACV09-01168

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☐ No ☒ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	N/A

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	N/A

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	N/A

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Christina A. Humphrey Date October 8, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Cormac J. Carney and the assigned discovery Magistrate Judge is Robert N. Block.

The case number on all documents filed with the Court should read as follows:

SACV09- 1168 CJC (RNBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

===== :
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☒ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:

Stanley D. Saltzman, Esq. (SBN 90058)
 Louis M. Marlin, Esq. (SBN 54053)
 MARLIN & SALTZMAN
 29229 Canwood Street, Suite 208
 Agoura Hills, CA 91301

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

JOHN S. PAULINO and all others similarly situated

CASE NUMBER

SACV09-01168 CJC (RNBx)

PLAINTIFF(S)

v.

BANK OF AMERICA, NATIONAL ASSOCIATION;
 BANK OF AMERICA CORPORATION, a Delaware
 corporation; and DOES 1 to 10 inclusive

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S): BANK OF AMERICA, NATIONAL ASSOCIATION; BANK OF AMERICA CORPORATION; and DOES 1 to 10 inclusive

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Christina A. Humphrey, Esq., whose address is 29229 Canwood Street, Suite 208, Agoura Hills, CA, 91301. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 09 OCT 2009

By:

SHEA BOURGEOIS

Deputy Clerk

(Seal of the Court)

SEAL

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].